

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of )

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LCI International Telecom Corp. )  
and the Competitive Telecommunications )  
Association Petition for Expedited )  
Rulemaking to Establish Reporting )  
Requirements and Performance and )  
Technical Standards for Operations )  
Support Systems )

RM-9101

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**REPLY COMMENTS IN SUPPORT OF PETITION FOR RULEMAKING**

Pilgrim Telephone, Inc. ("Pilgrim"),<sup>1</sup> by counsel and pursuant to *Comments Requested on Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems*, RM-9101, DA No. 97-1211, released June 10, 1997 ("Public Notice"), hereby files its Reply Comments supporting the initial comments submitted by U.S. ONE Communications Corporation and others urging the Commission to adopt an expedited rule making concerning the requirements governing operations support systems ("OSS"). Pilgrim supports the above-captioned Petition for Expedited Rulemaking ("Petition") filed by LCI International Telecom Corp. and the Competitive Telecommunications Association.<sup>2</sup>

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1. Pilgrim is an interstate exchange carrier providing common carrier services pursuant to tariffs on file with the Commission. Pilgrim Tariff FCC No. 1, effective March 7, 1995, and previous versions. Pilgrim offers a variety of common carrier services, including 1+ (where available), collect calling, 0+ (generally via 800-number access), and teleconferencing services. Pilgrim also provides a number of enhanced and/or information services, including specialized teleconferencing, voice mail, voice store and forward, and telemessaging services.

2. Pursuant to the Public Notice, which established July 30, 1997, as the reply date in this proceeding, these Reply Comments are timely filed.

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The Eighth Circuit Court of Appeals has recently held that OSS, along with all of the facilities or equipment used to provide telecommunications service, and all of the features, functions, and capabilities that are provided by means of such facilities or equipment, are "network elements" for purposes of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). *Iowa Utils. Bd. v. FCC*, No. 96-3321, Slip op. (8th Cir. July 18, 1997) ("*Iowa Utilities*"). It follows that OSS must be offered by both incumbent local exchange carriers and competitive local exchange carriers (collectively "LECs") to other common carriers ("OCCs") and enhanced service providers ("ESPs") on an unbundled, nondiscriminatory basis.

As a result of the ruling in *Iowa Utilities* and the new provisions in the 1996 Act, it is apparent that billing and collection services are OSS that must be provided on an unbundled, non-discriminatory basis. Moreover, in light of the pro-competitive national policy underlying both the 1996 Act and *Iowa Utilities*, many other types of services, including billing for calling card and casual use services, constitute network elements which LECs must unbundle and make available without discrimination.

Pilgrim supports the Petition's request that the Commission establish disclosure rules and performance standards that will make it easier to determine whether LECs are truly providing nondiscriminatory access to OSS. Pilgrim also calls on the Commission to adopt uniform technical standards that will compel LECs to standardize their system interfaces. It urges the Commission to reject the LECs' overlapping claims that they already provide non-discriminatory access<sup>3</sup> and that their provision of less than instantaneous, automatic access to

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3. See, e.g., Comments of BellSouth at 4; Comments of SNET at 4-5.

OSS is not discriminatory.<sup>4</sup> Finally, Pilgrim asks that the Commission impose effective penalties, such as foreclosure from competitive markets, on LECs that fail to provide non-discriminatory access to OSS.

I. THE 8TH CIRCUIT *IOWA UTILITIES BOARD v. FCC* DECISION ESTABLISHES THAT BILLING AND COLLECTION SERVICES ARE NETWORK ELEMENTS WHICH MUST BE PROVIDED ON A NONDISCRIMINATORY BASIS

Nondiscriminatory access to OSS is absolutely essential to the development of local competition. In August 1996 the Commission recognized as much in its Local Competition First Report and Order<sup>5</sup> where it held that:

[I]f competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing. Thus, providing nondiscriminatory access to these support system functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition.<sup>6</sup>

Consequently, the Commission held that §§ 251(c)(3) and (c)(4) of the Act required LECs to provide nondiscriminatory access to all of the aforementioned services.<sup>7</sup> To satisfy the "nondiscrimination" requirement a LECs was required to provide all carriers seeking OSS access the same quality of service it provided itself.<sup>8</sup> The Commission directed LECs to begin providing nondiscriminatory service by January 1, 1997.

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4. See, e.g., Comments of BellSouth at 5-8.

5. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket 96-98, 11 FCC Rcd 15499 (1996) ("First Report and Order").

6. *Id.* at ¶ 518.

7. *Id.* at ¶ 523.

8. *Id.* at 312.

As the Petition and the various initial comments which endorse it make clear, however, the LECs have persistently refused to provide non-discriminatory access to OSS. Moreover, a number of LECs have challenged the Commission's authority to even mandate the provision of nondiscriminatory service. The LECs claim that the Commission interpreted the Act's definition of "network element" too broadly. The relevant provision of the Act, § 251(c)(3), states:

The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

The LECs argued that § 251(c)(3)'s definition of "network element" was limited to physical parts of an LEC's network that were directly involved in the transmission of phone calls. In their view, the software systems and databases used to provide OSS fell outside the definition. Their narrow interpretation was rejected by the Eighth Circuit in *Iowa Utilities* where the Court expressly held that the "technology and information used to facilitate ordering, billing, and maintenance of phone service", i.e. the technologies that comprise OSS, were "network elements."<sup>9</sup>

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9. The Commission should establish national technical standards for the provision of OSS. Unlike those commenters who urge the Commission to adopt a wait-and-see approach, Pilgrim believes that the Commission should take prompt action to establish such standards, especially with respect to system interfaces. Otherwise, LECs will continue to operate a hodge-podge of idiosyncratic and incompatible systems.

As long as LECs are permitted to operate incompatible interfaces, barriers to entry will remain high and competition will be stifled. It is prohibitively expensive for all but the largest market entrants to develop a separate interface system for each LEC it intends to compete with. Even the biggest companies are severely disadvantaged when they are required to incur such costs.

Consequently, the Commission should take advantage of the opportunity afforded by the expedited rulemaking to mandate national technical standards. In particular, LECs

(continued...)

Even more broadly, the Eighth Circuit concluded that § 251(c)(3) should be construed expansively so that it encompasses all of the "facilities and equipment that are used in the overall commercial offering of telecommunications" as well as all "features, functions, and capabilities" provided by those facilities and equipment. Thus, the Court brought a variety of non-OSS -- including explicitly, *inter alia*, operator services, directory assistance, caller I.D., call forwarding, and call waiting -- within the definition of "network element".<sup>10</sup>

"Billing and collection" services are mentioned as examples of network elements in the second sentence of § 251(c)(3). The Commission's Public Notice in this docket identifies "billing" as an OSS function. Under the Eighth Circuit's analysis, "billing and collection" is clearly a "capability" provided by LEC facilities and equipment. Accordingly, it is difficult to imagine that any participant in this proceeding would question that billing and collection must be provided on a nondiscriminatory basis.

Nevertheless, Pilgrim wishes to emphasize the fundamental importance of nondiscriminatory access to billing and collection.<sup>11</sup> Simply stated, it is impossible to compete with an

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9. (...continued)

should be required to adopt standardized gateways that will interface their custom legacy systems with the "front ends" of other systems. Such standardization will greatly reduce barriers to entry and can be implemented by LECS with comparatively little expense.

Direct Commission action is necessary because the industry, left to its own devices, has traditionally been notoriously slow to reach consensus and will take a very long time to develop national interface standards. Given the LECs' powerful incentive to resist standardization and preserve their monopolies, it is possible that no consensus will ever be reached. Thus, if the Commission is unable to immediately develop interface standards on its own, it must take aggressive action to get the industry moving. For example, it might try setting a deadline by which consensus standards must be in place. If the deadline is not met the Commission could impose penalties or introduce standards of its own.

10. *Iowa Utilities* at 87-89.

11. Pilgrim's emphasis on billing and collection is not meant to imply that other OSS are unimportant or that they need not be provided by LECs on a nondiscriminatory basis.

entrenched LEC in any market, or for any service, including call completion, telemessaging, voice mail, and teleconferencing, without open access to billing and collection.<sup>12</sup> In Pilgrim's experience, billed name and address cannot be provided by the LEC for up to 35% of the telephone customers in a given billing area due to unlisted numbers or other data unavailability. The remaining 65% are likely to hold a new market entrant responsible for the various aggravations that ensue when billing and collection services are provided on a discriminatory basis. LECs are fully aware of this and have repeatedly used their monopoly power in this area to hinder entry into their regions. They have begun to deny access to billing and collection entirely unless a potential competitor agrees to burdensome and anticompetitive conditions, such as disclosing sensitive proprietary information, including details related to marketing and provisioning. In short, if the Commission does not compel LECs to provide non-discriminatory billing and collection, the LECs will be able to block the implementation of competition and subvert the will of Congress.

In addition, the pro-competitive philosophy reflected in both the 1996 Act and *Iowa Utilities* requires LECs to provide nondiscriminatory access to all OSS, including billing and collection, to providers of any telecommunications service that need such access in order to compete. For example, OCCs and ESPs that seek to provide competitive calling card and casual access services cannot possibly hope to do so unless the LECs grant nondiscriminatory access to their billing and collection databases. The LECs, of course, have no market

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12. Indeed, even without the 1996 Act, and the Commission's broad construction of the meaning of "network element," it could readily be argued that billing and collection services are so necessary to potential competitors that they constitute "essential facilities" under *United States v. Terminal R.R. Assoc.*, 224 U.S. 383 (1912), and its progeny. If billing and collection services were to be classified as "essential facilities" it would be illegal for LECs to provide them on a discriminatory basis, just as it is pursuant to the 1996 Act.

incentive to cooperate. Thus, it falls to the Commission to see to it that competitive carriers and providers are afforded nondiscriminatory access and thereby enabled to compete.

**II. THE COMMISSION SHOULD INITIATE AN EXPEDITED RULEMAKING TO ESTABLISH LEC REPORTING REQUIREMENTS AND MINIMUM PERFORMANCE STANDARDS THAT WILL ENABLE ESPS AND OCCS TO MONITOR LECS AND GUARD AGAINST DISCRIMINATION**

In the Public Notice, the Commission solicited comments on the question of whether LECs should be required to make disclosures comparing the OSS they provide to themselves with the OSS they provide to others. The purpose of such reporting requirements would be to guarantee that market entrants could effectively protect themselves against discrimination. Pilgrim asks the Commission to establish comprehensive disclosure rules to ensure that LECs provide nondiscriminatory access to OSS.

LECs have been extremely reluctant to reveal data pertaining to their OSS functions. Without such data, it is impossible for competitors to compare the quality of service they receive with the quality of service LECs provide to themselves. The lack of information also cripples regulators in their efforts to enforce the provisions of the 1996 Act and thereby fosters anti-competitive abuses.

The Commission can eliminate these problems by ordering LECs to measure and report on the various "critical" OSS functions specified in Appendix B of the Petition. If LECs were required to make monthly, public filings both detailing the quality of OSS they provide themselves and revealing the quality of service they have provided to their competitors, it would be far easier for competitors and regulators to identify discriminatory behavior.

It will also be necessary for the Commission to establish a variety of safeguards to prevent LECs from subverting the reporting requirements. For example, to make the data disclosures easier to understand, LECs should be required to release any internally produced

"narrative" materials that are "descriptive of the OSS support process."<sup>13</sup> Similarly, to make deception more difficult and reporting inconsistencies less common, the Commission should develop standardized, national methodologies pursuant to which measurements are conducted in a uniform manner and reported on a "geographically relevant" basis.<sup>14</sup> Finally, to ensure the reliability of the reports, they should include standard statistical analyses of the reported data and be subject to periodic audits.<sup>15</sup>

The effectiveness of the disclosure system will be greatly enhanced if the Commission implements a system of national OSS performance standards against which the quality of service LECs provide can be gauged. As the Department of Justice has stated:

[t]he ability to detect discrimination in the performance of [support] functions is dependent on the establishment of performance measures, allowing competitors and regulators to measure the [LECs] performance. The development of appropriate measures is critical to establishing that the local market is open. On an ongoing basis the measures must be able to assure that the local market remains open and that any [LEC] backsliding will be detected. . .<sup>16</sup>

Appendix B of the Petition describes a number of performance standards which it recommends that the Commission adopt. Because adopting these standards will make the proposed reporting system more effective, Pilgrim urges the Commission to require LECs to implement these standards and incorporate them into their monthly OSS filings. Pilgrim emphasizes that these performance standards must truly be uniform, that is, LECs' provisioning of unbundled services to a competitor must conform to the same standards that are

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13. Excel Communications, Initial Comments at 11.

14. See Initial Comments of WorldCom, Inc. at 8, 9.

15. See AT&T Initial Comments at 24-25.

16. See AT&T Initial Comments at pp. 10-11 (*citing* DOJ Oklahoma Evaluation, Affidavit of Michael J. Friduss, ¶¶ 19, 23.)



applied to its self-provisioning of OSS, and the provisioning among competitors must be nondiscriminatory.

**III. THE COMMISSION SHOULD REJECT ARGUMENTS THAT LECS ALREADY PROVIDE NONDISCRIMINATORY OSS SERVICE**

Several participants in this proceeding have submitted comments opposing the Petition and denying the need for an expedited rulemaking. Generally, they contend that LECs already provide nondiscriminatory service and that the provision of instantaneous electronic access is not a necessary prerequisite of nondiscriminatory service.<sup>17</sup> Such assertions are false and should be rejected by the Commission.

For there to be nondiscriminatory access, OSS must be provided on an a completely automated and interactive basis. Only when all competitors have instantaneous access on a nondiscriminatory basis to OSS identical to those enjoyed by the LECs themselves will "meaningful competition" be possible. Despite LEC assertions that they do not use instantaneous access facilities themselves, and that ESPs and OCCs such as Pilgrim are therefore seeking preferential, rather than nondiscriminatory access, the LECs' systems provide them with real-time interaction at every stage between their "front ends" and their legacy systems. This real-time capability gives LECs the ability to process an order while on the telephone. Whatever the LECs might claim, until they provide their competitors with the same capability, they will not be providing nondiscriminatory access to OSS.

**IV. THE COMMISSION SHOULD ESTABLISH AN EFFECTIVE PENALTY REGIME TO ENSURE THAT LECS COMPLY WITH THE NONDISCRIMINATION RULES**

Like all monopolists, LECs will not loosen their grip on their territory unless they are given very good reasons to do so. A LEC that refuses to provide non-discriminatory access

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17. See, e.g., Initial Comments of BellSouth Corporation at 3-8.

to OSS will enjoy a huge advantage over any possible competitor in the local exchange and full service telecommunications markets. Thus, although the Commission should punish recalcitrant LECs with large fines analogous to liquidated damages provisions to reflect the harm inflicted on potential competitors, it is unlikely that such penalties alone will suffice to achieve the Commission's policy objectives. Accordingly, the Commission should make use of injunctive remedies to give LECs even stronger incentives to obey the rules. In addition, the Commission should suspend the authority of non-complying LECs to enlist and serve new long-distance and other telecommunications services customers.

#### V. CONCLUSION

For the foregoing reasons, the Commission should grant the instant Petition for Expedited Rulemaking and establish a proceeding designed to establish reporting requirements and performance and technical standards for OSS.

Respectfully Submitted,

**PILGRIM TELEPHONE, INC.**

By: 

Walter Steimel, Jr.  
Marjorie K. Conner  
Ted Murphy  
Counsel

**Hunton & Williams**  
1900 K Street, N.W.  
Suite 1200  
Washington, D.C. 20006  
(202) 955-1500

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